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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/049,546	06/05/2003	Ernst Kraenzler	1969	7609
7590 06/25/2009				
Michael J Striker Striker Striker & Stenby 103 East Neck Road Huntington, NY 11743		EXAMINER CHUKWURAH, NATHANIEL C		
		ART UNIT 3721		
		MAIL DATE 06/25/2009		
		DELIVERY MODE PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte:

ERNST KRAENZLER, MANFRED RUFF, HARALD KRONDORFER,
RALPH DAMMERTZ, JOERG GOEHNER, and MARIO FRANK

Application 10/049,546
Technology Center 3700

Mailed: June 25, 2009

Before ERIC W. HAWTHORNE, *Supervisory Paralegal Specialist*
HAWTHORNE, *Supervisory Paralegal Specialist*.

ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was electronically received by the Board of Patent Appeals and Interferences on September 22, 2008. A review of the application revealed that it is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the Examiner to address the following matters requiring attention prior to docketing.

AMENDMENT AFTER FINAL

A review of the file indicates that on November 14, 2007, Appellant filed an Amendment After Final in response to the Final Rejection mailed February 1, 2007. It is not clear whether this Amendment has been considered because an Advisory Action has not been mailed to indicate whether or not the proposed amendment will or will not be entered for purposes of appeal. Clarification from the Examiner is required.

EXAMINER'S ANSWER, GROUNDS OF REJECTION

A review of the file finds that the grounds of rejection of the claims as provided in the Examiner's Answer mailed April 2, 2008 under the heading "Grounds of rejection" is not consistent with the grounds of rejection of claims set forth in the last Office action of record. The grounds of rejection of the claims as provided in the Examiner's Answer must be consistent with the last Office action of record, including any Advisory action responsive to any after final submissions. Each Grounds of rejection to be reviewed on appeal must be identified and any new grounds of rejection must be provided under a separate heading "New Grounds of Rejection" in the Examiner's Answer and must include the approval of the TC Director or his/her designee. *See also Manual of Patent Examining Procedure* (MPEP) § 1207.02 and 1207.03 (8th ed. Rev. 6, Sept. 2007) for details.

Specifically, the Examiner's Answer does not set forth a rejection of claim 36 as being rejected under 35 U.S.C. § 112, second paragraph; whereas the last Office action, including any mailed Advisory Action finds

that claim 36 is rejected under 35 U.S.C. § 112, second paragraph.
Correction of all Grounds of rejection for all claims is required.

INFORMATION DISCLOSURE STATEMENT

Appellants filed an Information Disclosure Statement (IDS) dated August 6, 2008. There is no indication on the record that the Examiner has considered the above IDS. MPEP § 609 requires the Examiner to consider any IDS filed by Applicant if timely submitted. A written communication notifying Appellant of the Examiner's consideration of the above IDS is required.

CONCLUSION

Accordingly, it is

ORDERED that the application is returned to the Examiner:

- 1) to provide a response to the Amendment After Final dated November 14, 2007;
- 2) to enter a "paper" clarifying the status of claim 36 rejected under 35 U.S.C. § 112;

OR

vacate the Examiner's Answer mailed April 2, 2008 and generate a substitute Examiner's Answer setting forth the correct Grounds of rejection and to correct other sections of the Answer as may be required;

- 3) to include the approval of the TC Director or his/her designee (as required for any new grounds of rejection);
- 4) to consider the IDS filed August 6, 2008; and
- 4) for such further action as may be appropriate.

If there are any questions pertaining to this Order, please contact the Board of Patent Appeals and Interferences at 571-272-9797.

EWH/cdc

Michael J Striker
Striker Striker & Stenby
103 East Neck Road
Huntington NY 11743